
(2014) 04 P&H CK 0063
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 6922 of 2014

Municipal Council

APPELLANT

Vs

Presiding Officer, Industrial Tribunal

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo)(bb), 2(ra), 25-F, 25-F(a), 25-T

Citation : (2014) 142 FLR 120 : (2014) 3 LLJ 238

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Vishwajit Bedi, Advocate for the Appellant

Judgement

G.S. Sandhawalia, J.—The present writ petition has been filed against the award dated 11.12.2013 (Annexure P-1) passed by the Industrial Tribunal, Patiala vide which, the respondent-workman has been reinstated with continuity of service but without back wages. Counsel for the petitioner has vehemently submitted that there was a contract inter se the parties and section 2(oo)(bb) of the Industrial Disputes Act, 1947 (in short "the Act") would be applicable and the Labour Court has gravely erred in directing reinstatement.

2. After hearing Counsel for the petitioner, this Court is of the opinion that no case made out in favour of the petitioner.

3. A perusal of the paper book would go on to show that initially, the respondent-workman was appointed on 1.10.1996 at Rs. 1,450/- on temporary basis as Mali. The said appointment continued, which would be clear from the resolution dated 22.1.1998 passed by the petitioner-Council.

Thereafter an agreement was entered into inter se the parties on 22.1.1998 whereby, the appointment was made for one year from the date of joining on contract basis being temporary. It is not denied that the termination was much beyond the term of the contract and was on 10.5.2003. The workman had served demand notice on 14.12.2004 regarding his grievance and resultantly, the matter

was referred to the Labour Court.

4. The Labour Court examined the statement of witnesses including that of Ramesh Kumar, Junior Assistant and also took into account the fact that the workman was also medically examined and police verification was also done which was not specifically denied and there was a specific averment by the workman to this extent. On account of this, it was held that the appointment was made by following the proper procedure and due process of recruitment was followed. A finding of fact was recorded that the workman had worked from 1.10.1996 to 9.5.2003 and completed more than 240 days immediately preceding the date of his termination. The record was examined and it was noticed that there was an affidavit of the workman that he had one living wife and Ex. M6 was the medical certificate issued by the Senior Medical Officer, Rajpura dated 8.10.1996. There was an attestation form of the workman for getting the character verification and there was a character verification report Ex. M14 submitted by the SSP, Patiala to the Additional Director General of Police. It was noticed that there was an order of the Director of the Local Self Government, Punjab vide which the post of workman was created and an advertisement was also issued for filling up the 10 posts of gardeners and two posts of clerks in the news papers as well and notified to the Employment Exchange and interview had been fixed and total 47 candidates had been selected and the workman was one of them. It was thus, noticed that the workman was not paid any compensation, as admitted by MW1 itself and no notice, charge sheet was served to the workman and neither any inquiry was conducted. Accordingly, reinstatement was ordered.

5. Once the workman had completed 240 days, the submission of the Counsel that it was a contractual appointment is without any basis. The contract came to an end on 21.1.1999 and thereafter, the workman continued to work till 2003. Even otherwise, the act of the Municipal Council by extending the term of contract by period of one year at a time amounts to unfair labour practice and the same is not permitted under the Act. Section 25-T of the Act provides that no employer shall commit any unfair labour practice. Unfair labour practice is defined u/s 2(ra) of the Act, which means any of the practices specified in the 5th Schedule. In the 5th Schedule, as per clause 10, to employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workman amounts to unfair labour practice. It is thus apparent that the petitioner-Council was resorting to the said means in order to avoid the rigors of the Act, which cannot be permitted. It has already been noticed that proper procedure had been followed for appointing the workman and while dispensing with the services, the provisions of section 25-F were not followed. A factual finding has been recorded by the Labour Court regarding this aspect and there is no denial to the fact that contract inter se the parties expired on 21.1.1999 and section 2(oo)(bb) of Act would not be applicable in such circumstances. The said plea is but to be rejected.

6. Regarding the second submission regarding the issue of compensation, the said plea also merits rejection. In the present case, the Labour Court has not granted any back wages keeping in view the principle of "no work no pay". The workman had worked for a period of almost 7 years when his services were dispensed with. The proper procedure has not been followed. The Apex Court in *Harjinder Singh Vs. Punjab State Warehousing Corporation*, held that reinstatement is normal rule and the workman being the beneficiary, cannot be denied the said relief. The relevant portion read thus:--

Of late, there has been a visible shift in the Courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalisation are fast becoming the *raison d'être* of the judicial process and an impression has been created that the Constitutional Courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman-employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The Courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the Courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer-public or private.

7. In *Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana)*, also, it has been held by the Apex Court that reinstatement is the normal rule once the workman has worked for 240 days and the employee is entitled to continue in employment as if his services were not terminated. It was held as under:--

This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of section 25-F of the Act. Sometimes it has been termed as *ab initio* void, sometimes as *illegal per se*, sometimes as nullity and sometimes as *non est*. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an

employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of sections 25-F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.

Accordingly, in view of the settled principles of law, no case is made out for interference and the writ petition is dismissed in limine.